

Ensuring Title IV-E Eligibility

Hon. Michael J. Anderegg
Presiding Judge
Family Division
Marquette County Circuit Court

Introduction

- Title IV-E of the Social Security Act
- Adoption and Safe Families Act (ASFA)

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Important ?

- "Free" placement for children in foster care – delinquent or protective
- Court's role is critical – Can't qualify without findings & timely review hearings
- Defects can't be cured by amended orders
- Affects entire stay in foster care

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What findings are necessary?

- "Contrary to welfare" 45CFR 1356.21(c)
 - First hearing 45CFR1356.21(c)
- "Reasonable Efforts"
 - Within 60 days of "removal"
 - "Removal" is when child was actually removed from parents, or upon a finding of abuse/neglect, whichever is earlier 45CFR1355.20

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What is a "finding"?

- Need *not* be a fact proved by admissible evidence after an adversarial hearing
 - Can use hearsay reports or affidavit
 - Whatever is used to support "finding" comes from only the petitioner, not the respondent

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What is a "finding"? – cont'd

- Must be "detailed and specific" 45CFR1356.21
 - Best method: few short sentences referring to specific actions or services
 - May refer to other documents – specific parts
 - If the court order does *not* contain these findings, but they are set forth on the record, a transcript of the hearing may preserve IV-E eligibility

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Findings: Address the specific case plan/goal/status

- Reasonable efforts have not been made
 - No evidence
 - Result – no IV-E funding
 - Adjournments
 - Good practice – never make this finding without following up by meeting between chief judge and CPS supervisor or county director

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Findings: Address the specific case plan/goal/status – cont'd

- Reasonable efforts to prevent removal
 - First hearing
- Reasonable efforts to reunite the family
 - Review hearings
- Reasonable efforts are not necessary
 - Extreme danger to child/aggravated circumstances
 - Triggers requirement for permanency planning within 28 days

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Findings: Address the specific case plan/goal/status – cont'd

- Reasonable efforts to establish permanent home
 - Best practice – state goal
 - Permanency planning required within 12 months of “removal” and every 12 months thereafter

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IV-E Funding for Delinquency Cases

- Same requirements
- Awkward fit

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Other Requirements for IV-E

- Family eligibility
- Eligible placement
- Placement "responsibility" for FIA

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IV-E Applications Process

- Child removed
- Initial court hearing within 24 hours
- Initial court order
- Acceptance notice sent to court
- Determination of eligibility
- Denial - FIA Form 176
- Administrative Appeal

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Best Practices

- Local training
- Presiding judge review of denials
- Notice of denial must be sent to lawyer/guardian ad litem by court
- Calendaring
- Compliance checklists

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Ensuring Title IV-E Eligibility

Ms. Kathryne O'Grady
Director
Child Welfare Services
State Court Administrative Office

Title IV-E Review Overview

- Conducted March 22-26, 2004
 - Administration of Children & Families (ACF)
 - Michigan Family Independence Agency (FIA)
- Purpose of review
 - Determine whether payments were made on behalf of eligible children and eligible homes & institutions between April 1 – September 30, 2003
- 100 cases state-wide were randomly pulled
 - 80 reviewed
 - 16 initially found to be non-compliant

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Overview – cont'd

- Supplemental documentation provided to ACF to persuade reconsideration
- 12 cases still failed audit
 - 8 of 12 cases being appealed
- Program Improvement Plan (PIP) submitted to ACF by FIA on July 26, 2004.
 - Goals & action to correct each identified area needing improvement
 - Completed within 1 year

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Overview – cont'd

- Pursuant to 45 CFR 1356.71(j)(2), a secondary review will be held
 - following PIP completion
 - 150 cases
- If more than 15 cases are non-compliant
 - Penalty assessed equivalent to the rate of error as extrapolated to the entire population of cases receiving Title IV-E funding

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Disallowance

- 2004 review - \$283,223.89
 - Amount continues to accrue if determined to be ineligible, but receives Title IV-E funds after 9/30/03.
- Funds disallowed back to date of placement, if no judicial determination that remaining in the home is contrary to the child's welfare

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Disallowance – cont'd

- Funds disallowed if no finding that reasonable efforts were made to finalize a permanency plan with 12 months of child entering foster care & every 12 months thereafter. CFR 1356.21(2)(i)
- Child becomes ineligible at end of month in which judicial determination is required, & remains ineligible until such determination is made. CFR 1356.21(b)(2)(ii)

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Disallowance – cont'd

- Entered foster care means earlier of:
 - Date of 1st judicial finding that the child has been subjected to child abuse or neglect, or
 - Date that is 60 calendar days after the date on which child is removed from home per statute. CFR 1355.20

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Error Cases

- Identified areas of non-compliance
 - 3 cases: licensing errors with payments made during the period license had expired
 - 2 cases: errors relating to incorrect eligibility determination of AFDC requirements
 - 9 cases: errors in court orders

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Error Cases – cont'd

- 9 errors in court orders
 - 3 cases: did not address contrary to the welfare in the 1st order of removal
 - 3 cases: problem orders regarding non-compliant reasonable efforts findings for removal
 - 2 cases: non-compliant regarding reasonable efforts to finalize a permanency plan
 - 1 case: court order did not identify the State agency as having care & placement responsibility for the child

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Best Practices

In general

- Be as specific as possible in orders
- Do not use abbreviations in orders
- Use standardized order forms
- Mandate staff to participate in training
- Establish collaboration with local FIA
- Utilize Child Welfare Services Division of SCAO for technical assistance & training (**517-373-1956**)

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Best Practices – cont'd

Contrary to the Welfare

- State specified language
- Reasons for findings must be specific:
Examples----

FIA care & supervision

- Do not specify a relative or parent
- Ideal language merely states "under FIA care and supervision"

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Best Practices – cont'd

Judicial determinations for reasonable efforts to prevent removal

- Findings must be made in all cases except for limited circumstances
- Finding must still be made for cases in which the children are placed by the police prior to FIA involvement

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Best Practices – cont'd

Judicial determinations for reasonable efforts to prevent removal

- If finding is not made at the 1st hearing, court must have system to red flag
- Pretrial order is being created to address Title IV-E reasonable efforts issues & identified deficiencies from Child and Family Services Review

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Best Practices – cont'd

Judicial determinations for reasonable efforts to prevent removal

- Proposed legislation to make the operational date the date the child is physically removed from home, which should help alleviate late findings. Removal date should be date used to trigger findings
- Language in order must be specific. What are the reasonable efforts?

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Best Practices – cont'd

Judicial determinations for reasonable efforts to finalize a permanency plan

- Post dispositional review hearings to be conducted the 1st year should be scheduled at the dispositional hearing to guarantee they are held timely

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Best Practices – cont'd

Judicial determinations for reasonable efforts to finalize a permanency plan

- 1st permanency planning hearing should be held no more than 12 months from removal
 - Each subsequent permanency planning hearing to be scheduled for not more than 12 months from the preceding permanency hearing

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Best Practices – cont'd

Judicial determinations for reasonable efforts to finalize a permanency plan

- Order should contain language that reasonable efforts to finalize the permanency plan have been made & specify those efforts

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Best Practices – cont'd

Judicial determinations for reasonable efforts to finalize a permanency plan

- Statute refers to "reunification, adoption, legal guardianship, placement with a fit and willing relative, or placement in another permanent living arrangement."
45 CFR 1356.21 (b)(2)(1)

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Best Practices – cont'd

Judicial determinations for reasonable efforts to finalize a permanency plan

- Review files to determine if permanency hearing has been conducted, and if not, conduct immediately

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